

REMARKS

The present application was filed on November 9, 2000 with claims 1 through 35. Claims 6-16, 22-31, and 33-36 were cancelled in the Amendment and Response to Office Action dated October 14, 2004. Claims 1-5, 17-21, and 32 are presently pending in the above-identified patent application. Claims 1, 17, and 32 are proposed to be amended and claims 3 and 19 are proposed to be cancelled, without prejudice, herein. A Request for Continued Examination is being submitted herewith.

Prior to the appeal, the Examiner rejected claims 1-5 under 35 U.S.C. §101 because they are directed to non-statutory subject matter and rejected claims 1-5, 17-21, and 32 remain rejected under 35 U.S.C. §103(a) as being unpatentable over Woolston (United States Patent Number 6,266,651 B1) in view of Silverman et al. (United States Patent Number 5,924,082). In the Decision on Appeal, the Appeal Board affirmed the rejection of claims 1-5 under 35 U.S.C. §101 because they are directed to non-statutory subject matter and affirmed the rejection of claims 1, 2, 4, 5, 17, 18, 20, 21, and 32 under 35 U.S.C. §103(a) as being unpatentable over Woolston in view of Silverman et al. The Appeal Board did not sustain the rejection of claims 3 and 19.

Section 101 Rejections

Claims 1-5 were rejected under 35 U.S.C. §101 because they are directed to non-statutory subject matter.

Applicant notes that independent claim 1 has been amended to require wherein at least one of said steps is performed by a processor and respectfully request that the section 101 rejections be withdrawn.

Independent Claims 1, 17 and 31

Independent claims 1, 17, and 32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Woolston in view of Silverman et al.

Applicant notes that the independent claims have been amended to incorporate the limitation of claim 3. In rejecting claims 3 and 19, the Examiner asserted that Woolston discloses the step of comparing said bid to other pending bids to identify pending bids that are in proximity to said received bid (Woolston: claim 35).

Applicant notes that Woolston teaches to selectively *displace the current retail bid amount* if the *received wholesale bid increased by a predetermined amount is*

greater than the current retail bid (Woolston: claim 35). Woolston may teach to displace a current bid based on a received bid; Woolston, however, does *not identify bids* that are in *proximity* to said received bid. As noted above, the Appeal Board did not sustain the rejection of claims 3 and 19. Independent claims 1, 17, and 32, as amended, require the
5 step of comparing said bid to other pending bids to *identify pending bids* that are in proximity to said received bid.

Thus, Woolston and Silverman, alone or in combination, do not disclose or suggest the step of comparing said bid to other pending bids to identify pending bids that are in proximity to said received bid, as required by independent claims 1, 17, and
10 32, as amended.

Dependent Claims

Claims 2, 4, and 5 and claims 18, 20, and 21 are dependent on independent claims 1 and 17, respectively, and are therefore patentably distinguished over Woolston and Silverman et al., alone or in combination, because of their dependency from amended
15 independent claims 1 and 17 for the reasons set forth above, as well as other elements these claims add in combination to their base claim.

Conclusion

All of the pending claims following entry of the amendments, i.e., claims 1, 2, 4, 5, 17, 18, 20, 21, and 32, are in condition for allowance and such favorable action
20 is earnestly solicited.

If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Examiner is invited to contact the undersigned at the telephone number indicated below.

The Examiner's attention to this matter is appreciated.

Respectfully submitted,

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